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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Development of Statewide Guidelines for Reducing Wildlife Impacts from Wind Energy Development	)))	Docket No. 06-OII-1 Developing Statewide Avian Guidelines

COMMENTS OF THE

CALIFORNIA WIND ENERGY ASSOCIATION

ON WORKSHOP #1 TOPICS

The California Wind Energy Association ("CalWEA") appreciates this opportunity to provide comments on the issues and questions raised in Attachment A to the Notice of Staff Workshop #1, which was held on July 28, 2006.

I. Need, Purpose and Use of Guidelines

A. General Comments

The guidelines should be consistent with and relate to the California Environmental Quality Act (CEQA), which governs the siting and permitting of wind projects along with local land use laws. As we explained in our June 16, 2006, comments, whenever local agencies make land use decisions that may have a significant effect on the environment, CEQA requires them to evaluate and disclose the significance of the environmental impact, and to impose feasible mitigation measures to reduce or minimize significant environmental impacts. Environmental review of projects is conducted through the preparation and circulation of Environmental Impact Reports (EIRs) and Negative Declarations.[1]

The guidelines should recognize that some mortality to avian and bat species and possible species displacement is inevitable from wind projects and that the function of the guidelines is to minimize mortality and displacement by establishing voluntary information-gathering protocols so that local decision makers can determine whether mortality is significant for purposes of CEQA.[2] The guidelines could also suggest a

[1] The guidelines therefore should not assume that EIRs will be prepared for all projects, but should allow for projects to be permitted through the use of negative declarations or categorical exemptions.

[2] Under CEQA, a "significant effect on the environment" is "a substantial, or potentially substantial, adverse change to the environment.**"** CEQA Guidelines contain standards of significance for evaluating impacts to biological resources. For example, the Guidelines provide that "A project has a significant effect on the environment if, among other things, it substantially

range of mitigation measures if a determination of significance is made. The guidelines could address how significance determinations should be made: e.g., on the basis of biologically significant impact to a species as a whole. Whatever basis is used for determining significance, it must be consistent with how significance is determined for other proposed development projects under CEQA.

The guidelines, in spite of the "voluntary" label, will be viewed as regulations, just as the USFWS's Interim Guidelines were. They therefore need to provide guidance, such as we outline below, rather than prescriptive requirements. In addition, the voluntary nature of the guidelines needs to be explicitly stated.

Lead local agencies should use the guidelines by providing them to wind developer applicants at the beginning of the application process and by using the guidelines to prepare their own documents and to evaluate the documents provided by wind developers. Local agencies should not adopt the guidelines into their local ordinances because this would itself be considered a project subject to CEQA and would not be necessary. It would also turn the guidelines into compulsory local regulations rather than voluntary guidelines.

B. Recommended Approach

We recommend that the guidelines provide a decision-tree type of approach that is consistent with CEQA. This type of approach will ensure that each proposed project is adequately studied while not imposing study requirements that are beyond what is necessary to determine whether the proposed project will have significant impacts. The approach also will provide the benefit of steering developers towards sites that will not require detailed field studies (because available evidence shows that they are not environmentally sensitive) or mitigation. Further, since project designs are prepared in advance of the environmental assessment on the project, developers will have an incentive to minimize project impacts in the project design, in the context of all constraints faced by a project.

We provide the general framework of such an approach as follows.

1. The initial focus in pre-permitting assessment should be to determine whether there is enough information to determine whether the project will have a significant adverse impact on avian species.

    a. The guidelines should address what kind of information is needed to make that determination including species presence, abundance and behavior in the Wind Resource Assessment (WRA). This information can be collected from different information sources and methods

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reduces the habitat of a fish or wildlife species, causes a fish or wildlife population to drop below self-sustaining levels, threatens to eliminate a plant or animal community, substantially reduces the number or restricts the range of an endangered, rare, or threatened species." Our use of the term "significant effect" or "significant impact" in this document refers to this definition.

including correlation with existing studies – similar habitat, similar species, and similar wind facilities.[3]

The guidelines should recognize that certain information that is central to making determinations (e.g., migratory pathways, nesting, flight patterns, relative abundance, etc.) can be obtained from many possible sources: published studies, governmental databases, conservation groups and existing mortality surveys, as well as site-specific field studies. These studies can range from simple site reconnaissance to detailed field studies, possibly including acoustical and radar studies.

b. If existing information and analysis show that the project will not have a significant adverse impact on a species of concern, then further studies (e.g., more detailed field studies) to more precisely quantify abundance and flight behavior are not necessary.

c. If existing information and analysis are inadequate to show that a project will not have a significant adverse impact on a species of concern, then more detailed field studies may be appropriate to fill in information gaps so that an impact determination can be made.

2. The guidelines should develop criteria that would enable projects meeting the criteria to be deemed to have less than significant avian impacts under CEQA, exempting them from further study (beyond documenting that they meet the criteria) for avian impacts. The criteria could include:

a. A small new wind project of less than a certain size that is not located in a sensitive area, such as a designated wildlife area as determined by the local agency, or state or federal law;

b. Projects of any size in developed and defined WRAs where impacts have been determined to be less than significant (e.g., Riverside Co.[4]);

c. Sites where sufficient existing information is available to make a determination of non-significant impact. For example, there may be sufficient existing information on species occurrence and abundance and exposure conditions, or post-construction monitoring may have taken place in nearby sites where habitats and avian populations are similar and impacts to the species as a whole have been shown to be less than significant.

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[3] See, e.g., "Synthesis and Comparison of Baseline Avian and Bat Use, Raptor Nesting and Mortality Information from Proposed and Existing Wind Developments," prepared for the Bonneville Power Administration by WEST, Inc., December 2002.

[4] See "Avian Monitoring and Risk Assessment at the San Gorgonio Wind Resource Area", Anderson et al., NREL/SR-500-38054, August 2005.

d. New wind projects between X and Y in size, located in an established wind resource area that has been the subject of an Environmental Impact Report prepared within the last five years.

e. Replacement or reconstruction of existing wind turbines that do not increase nameplate capacity by more than 25% or which either decrease, or do not increase the footprint of the existing wind project, and where studies have shown no indication of significant impact.

3. If a determination of non-significant impact is made by the local authority, the guidelines for preconstruction monitoring cease to apply.

   a. However, it may be appropriate in some cases (e.g., in WRAs with large undeveloped areas that will be subject to substantial development, such as Kern County) for initial projects to conduct one-year post-construction mortality surveys to confirm (or not) that predictions are correct, with data publicly shared. If one-year data shows potentially significant effects, an additional year (or two) of monitoring should be conducted.

4. If significant impacts are predicted (or experienced), or where there is concern about potential significant impacts, a project would go on to consider pre- and/or post-construction studies to provide information for site avoidance, mitigation, etc.

   a. The type of pre-construction studies should reflect what is necessary to make a decision under CEQA. Information should be sought only if the results are likely to affect the siting decision by adding significantly to what is already known. (For example, studies are not necessary where they would only change the precision of the prediction and not the accuracy of it, such as modifying a predicted mortality rate, e.g., from 4.5 to 4.9 deaths/turbine/year, deaths/MW/year, etc.)

   b. Mitigation of some type will be required where impacts are significant. The guidelines could include descriptions of possible types of mitigation. (This is a topic for another workshop.) The objective of mitigation would be to lower the impacts of the project to below significant levels.

   c. When post-construction carcass counts are high, background mortality studies should be conducted so that naturally occurring mortality can be separated out from project-related mortality.[5] The data from

[5] See CalWEA, "Background Avian Mortality in California Wind Resource Areas," March 24, 2006.

background mortality studies will considerably enhance the development of species-specific strategies to reduce avian impacts and would better inform decisions on the appropriate level of mitigation for avian deaths.

II. Relationship of Guidelines to CEQA, State, and Federal Wildlife Laws

To the extent the guidelines seek to minimize significant impacts on avian and bat species from wind projects, they would be compatible with the state and federal laws protecting wildlife. As stated in section I, above, the guidelines should be consistent with and relate to CEQA.

III. Other State and Foreign Guidelines

Attachment A asked, "What elements of other guidelines (federal, state, and other countries) would be appropriate to incorporate into California's guidelines?" and provided some examples to consider. We respond to some of those examples here.

A. **"**Level of Concern" matrix that uses sensitivity of site and size of project to determine overall level of concern associated with bird risk and as a tool to give guidance on the duration and level of intensity of pre-construction studies (Canada)

While Canada's draft 4x4 matrix may be a useful model to look at, our concern is that inevitably projects will get squished into an inappropriate box, either too high or too low – a 4x4 matrix can only accommodate 16 situations, when in reality there are many more. It is more appropriate to provide a guidance document that would be applied at each site where local officials (and their biologists) would make the determination about the sensitivity of the site based on a decision-tree type of approach as outlined above.

B. Adaptive management approach for mitigation, an analytical process for adjusting management and research decisions to achieve management goals such as reduction in bird/bat fatalities (Canada, Washington)

The adaptive management concept is still in its infancy for use in wind projects, and there are no guidelines or accepted methods for such an approach for wind projects. Therefore, we recommend that the Commission not pursue adaptive management at this time as a mitigation approach.

C. Specify minimum number of years for conducting pre- and post-construction studies (Vermont, USFWS)

The decision-tree type of approach outlined above provides for the appropriate type and duration of fields study, if any, based on the availability of existing relevant

information and sensitivity of the area. If there are already four seasons of study on a nearby wind project, for example, no further study of seasonal patterns may be required. If specific estimates of bird abundance are needed, one year may not be representative because of annual variability. However, there are scientifically sound methods to extrapolate from one year of data to develop representative annual estimates.

Before determining the type and length of studies that need to be conducted, a number of questions need to be answered: what kind of assessment is required, qualitative or quantitative, to make a determination of significance; and what methodology should be used for these assessments. Often radar is required as "the study" without specifying how it will be used in the decision making process.

D. Formation of Technical Advisory Committee for reviewing monitoring data and making post-construction management recommendations (Washington)

Counties should form such committees if they believe they are needed in specific cases.

E. Use of radar to count migrants and identify flight paths where there is medium to very high risk of nocturnal migrants colliding with wind turbines (Canada)

It should not be assumed that radar studies will be required to make an assessment of risk under CEQA. Radar is not the only method that can provide information on abundance, flight paths, and behavior. The needed information may come from a variety of other sources (see discussion in section I, above).

F. If wind turbines are causing unacceptable levels of fatalities and avoidance mitigation proves unsuccessful, recommend habitat acquisition or conservation easement to contribute to long-term protection of birds and other wildlife (Canada, Washington).

What is meant by "unacceptable"? If a project's impacts were predicted to be non-significant under CEQA, but in practice they prove to be significant for a particular species, then mitigation would be in order (see section I.B.4) Mitigation may have many forms depending upon the species and circumstances.

Thank you for considering these comments. We look forward to participating in the next workshop to further discuss these issues.

Respectfully submitted,

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